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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**DECLARATION OF ZACHARY G.F.
ABRAHAMSON IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S
OPPOSITION TO BIRNBAUM & GODKIN,
LLP'S MARCH 15, 2019 MOTION TO SEAL**

Date: July 19, 2019
Time: 2:00 p.m.
Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 I, Zachary G.F. Abrahamson, declare as follows:

2 1. I am a lawyer with the law firm Durie Tangri LLP, counsel of record for Defendant
3 Facebook, Inc. ("Facebook") in the above-captioned matter. I provide this declaration in support of
4 Facebook's Opposition to Birnbaum & Godkin, LLP's March 15, 2019 Motion to Seal. I declare that the
5 following statements are true to the best of my knowledge, information, and belief, formed after a
6 reasonable inquiry under the circumstances. If called upon to testify, I could and would competently
7 testify thereto.

8 2. Attached as **Exhibit 1** hereto is a true and correct copy of the Declaration of David S.
9 Godkin in Response to CMO No. 19, Redacted for Public Filing, filed in this matter on March 18, 2019.

10 3. Attached as **Exhibit 2** hereto is a true and correct copy of the Declaration of Davis S.
11 Godkin in Support of Response of David S. Godkin, James E. Kruzer and Birnbaum & Godkin, LLP to
12 Defendant's Ex Parte Application for an Order Enforcing the Stipulated Protective Order, filed in this
13 matter on February 28, 2019.

14 4. Attached as **Exhibit 3** hereto is a true and correct copy of Case Management Order No.
15 19, issued in this matter on March 1, 2019.

16 5. Attached as **Exhibit 4** hereto is a true and correct copy of excerpts for the Reporter's
17 Transcript of Proceedings taken in this matter on March 13, 2019.

18 6. Attached as **Exhibit 5** hereto is a true and correct copy of the Declaration of Thomas
19 Scaramellino in Compliance with Amended Case Management Order No. 19, filed in this matter on
20 March 14, 2019.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of
22 July, 2019, in San Francisco, California.

23
24 
25 ZACHARY G. F. ABRAHAMSON

1 **PROOF OF SERVICE**

2 I am employed in San Francisco County, State of California, in the office of a member of the bar
3 of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a
4 party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

5 On July 8, 2019, I served the following documents in the manner described below:

6 **DECLARATION OF ZACHARY G.F. ABRAHAMSON IN SUPPORT OF**
7 **DEFENDANT FACEBOOK, INC.'S OPPOSITION TO BIRNBAUM & GODKIN,**
8 **LLP'S MARCH 15, 2019 MOTION TO SEAL**

- 9 ☒ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business
10 practice of Durie Tangri LLP for collection and processing of correspondence for overnight
11 delivery, and I caused such document(s) described herein to be deposited for delivery to a
12 facility regularly maintained by Federal Express for overnight delivery.
- 13 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
14 Durie Tangri's electronic mail system from cortega@durietangri.com to the email
15 addresses set forth below.

16 On the following part(ies) in this action:

17 **VIA OVERNIGHT MAIL & EMAIL**

18 Reno F.R. Fernandez III
19 Matthew J. Olson
20 Macdonald Fernandez LLP
21 221 Sansome Street, Third Floor
22 San Francisco, CA 94104
23 Reno@MacFern.com
24 Matt@MacFern.com

25 *Attorneys for Plaintiff Six4Three, LLC*

26 **VIA EMAIL ONLY**

27 Stuart G. Gross
28 GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
sgross@grosskleinlaw.com

VIA EMAIL ONLY

David S. Godkin
James Kruzer
BIRNBAUM & GODKIN, LLP
280 Summer Street
Boston, MA 02210
godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

VIA EMAIL ONLY

Jack Russo
Christopher Sargent
ComputerLaw Group, LLP
401 Florence Street
Palo Alto, CA 94301
jrusso@computerlaw.com
csargent@computerlaw.com
ecf@computerlaw.com

*Attorney for Theodore Kramer and Thomas
Scaramellino (individual capacities)*

VIA EMAIL ONLY

James A. Murphy
James A. Lassart
Thomas P Mazzucco
Joseph Leveroni
Murphy Pearson Bradley & Feeney
88 Kearny St, 10th Floor
San Francisco, CA 94108
JMurphy@MPBF.com
jlassart@mpbf.com
TMazzucco@MPBF.com
JLeveroni@MPBF.com

Attorney for Birnbaum & Godkin, LLP

1 **VIA EMAIL ONLY**

2 Donald P. Sullivan
3 Wilson Elser
4 525 Market Street, 17th Floor
5 San Francisco, CA 94105
6 donald.sullivan@wilsonelser.com
7 Joyce.Vialpando@wilsonelser.com
8 Dea.Palumbo@wilsonelser.com

9 *Attorney for Gross & Klein LLP*

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct. Executed on July 8, 2019, at San Francisco, California.
12

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Christina Ortega

EXHIBIT 1

ON 3/18/2019

By /s/ Marcela Enriquez
Deputy Clerk

1 James A. Murphy - 062223

JMurphy@mpbf.com

2 James A. Lassart - 40913

JLassart@mpbf.com

3 Joseph S. Leveroni - 304721

JLeveroni@mpbf.com

4 MURPHY, PEARSON, BRADLEY & FEENEY

5 88 Kearny Street, 10th Floor

San Francisco, CA 94108-5530

6 Telephone: (415) 788-1900

7 Facsimile: (415) 393-8087

8 Attorneys for Plaintiff's Counsel

David S. Godkin (admitted *pro hac vice*)

9 James E. Kruzer (admitted *pro hac vice*)

Birnbaum & Godkin, LLP

10 280 Summer Street

11 Boston, MA 02210

Telephone: (617) 307-6100

12 Facsimile: (617) 307-6101

godkin@birnbaumgodkin.com

13 kruzer@birnbaumgodkin.com

14
15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF SAN MATEO

17 SIX4THREE, LLC, a Delaware limited
18 liability company;

19 Plaintiff,

20 v.

21 FACEBOOK, INC., a Delaware
22 corporation;
23 MARK ZUCKERBERG, an individual;
24 CHRISTOPHER COX, an individual;
25 JAVIER OLIVAN, an individual;
26 SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
27 ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,

28 Defendants.

Case No. CIV 533328

Assigned For All Purposes To
Hon. V. Raymond Swope, Department 23

**DECLARATION OF DAVID S. GODKIN IN
RESPONSE TO CMO NO. 19
REDACTED FOR PUBLIC FILING**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

1 I, David S. Godkin, declare:

2 1. I am a partner at the law firm of Birnbaum & Godkin, LLP, counsel of record for
3 Plaintiff Six4Three, LLC ("643") in this case. I make this Declaration from personal
4 knowledge, and if called to testify, I could and would competently testify thereto.

5 2. Case Management Order no. 19, ¶4 directs that I serve a declaration "clarifying
6 his or any person's, whether employed, consulted, retained, volunteered, affiliated or associated
7 with Birnbaum & Godkin, LLP, compliance with Paragraph 6 [of the Protective Order] by 'not
8 reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to
9 receive such information.'" This declaration is being served pursuant to that Order.

10 3. My firm has stored and maintained Facebook's confidential information on a
11 password-protected document hosting platform (Redacted) and on the firm's secure server.

12 4. Only firm employees have access to the firm's secure server.

13 5. Thomas Scaramellino assisted with the litigation as an outside member of the
14 legal team. He was not given access to the firm's secure server. Mr. Scaramellino reviewed the
15 Stipulated Protective Order and blank certification. He then executed the Protective Order
16 certification on December 1, 2016. A copy of Mr. Scaramellino's executed certification is
17 attached hereto as Exhibit A. Because Mr. Scaramellino was not employed by the firm, and
18 was an investor in Six4Three, I required that he execute the Protective Order certification before
19 giving him access to Facebook's confidential information. Initially Mr. Scaramellino was given
20 access to Facebook's confidential documents but not highly confidential documents. Therefore,
21 Mr. Scaramellino struck out "Highly Confidential Information" on the certification that he
22 executed. After he executed the certification, Mr. Scaramellino was given access to the
23 confidential files on the document hosting platform. As the litigation progressed, I required Mr.
24 Scaramellino's assistance with preparation of deposition outlines and pleadings that included
25 Facebook's highly confidential documents as well as confidential documents. In addition, the
26 Court had placed no restrictions on Mr. Scaramellino's involvement as a member of the legal
27 team. I therefore permitted Mr. Scaramellino to access Facebook's highly confidential
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1 documents. Mr. Scaramellino understood that strict compliance with the Protective Order was
2 required.

3 6. From time to time, I determined that it was necessary for the prosecution of the
4 litigation to share Facebook's confidential information with Six4Three's Managing Director,
5 Ted Kramer, and therefore my firm and the legal team disclosed Facebook confidential
6 information to him. However, all members of the legal team dealing with Mr. Kramer
7 understood that he could not have access to highly confidential information. As an officer of a
8 party to the litigation, Mr. Kramer was not required to execute the Protective Order certification.

9 7. My firm engaged [Redacted] on January 6, 2017 to review Facebook's
10 documents to assist us in identifying potential deposition and trial witnesses. We provided the
11 Stipulated Protective Order and blank certification to [Redacted] on January 6, 2017, and she
12 executed the certification on the same date. A copy of [Redacted] executed certification is
13 attached hereto as Exhibit B. After she executed the certification, [Redacted] was granted access
14 to Facebook's confidential and highly confidential information. [Redacted] was granted access
15 to the Relativity document hosting platform. [Redacted] has affirmed that she revealed and
16 discussed Facebook's confidential and highly confidential information only with me, Mr.
17 Kruzer, and Mr. Scaramellino. She has affirmed that she stored and maintained Facebook's
18 confidential and highly confidential information in a secure location. I terminated [Redacted]
19 engagement with my firm in early January, 2019, and asked her to return or destroy all of
20 Facebook's confidential and highly confidential information. On January 24, 2019, [Redacted]
21 confirmed to me that she had returned and destroyed all of Facebook's confidential and highly
22 confidential information between January 4, 2019 and January 24, 2019. A copy of [Redacted]
23 declaration ordered in Case Management Order No. 19 is attached hereto as Exhibit C.

24 8. My firm engaged [Redacted] to assist the legal team with analysis of
25 Facebook's privilege logs. [Redacted] was provided the Stipulated Protective Order and blank
26 certification in early August, 2017, and he executed the certification on August 4, 2017. A copy
27 of [Redacted] executed certification is attached hereto as Exhibit D. My firm did not provide
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1 [Redacted] with any Facebook confidential or highly confidential information. To the best of
2 my knowledge, the only member of Six4Three's legal team who communicated with [Redacted]
3 [Redacted] Mr. Scaramellino, and [Redacted] involvement was limited to the analysis of
4 Facebook's privilege logs.

5 9. My firm engaged [Redacted] to assist us in reviewing Facebook's
6 arguments related to digital privacy issues. We provided a copy of the Stipulated Protective
7 Order and blank certification to [Redacted] on May 10, 2018. He executed the certification on
8 May 14, 2018. A copy of [Redacted] executed certification is attached hereto as Exhibit E.
9 My firm provided Facebook confidential and highly confidential information to him in May and
10 June, 2018, after he executed the certification. I terminated my firm's engagement with [Redacted]
11 [Redacted] in early January, 2019, and directed him to return or destroy all Facebook confidential
12 information that he had in his possession, including all documents referring to Facebook's
13 confidential documents, and to confirm that he had done so. On January 11, 2019, [Redacted]
14 confirmed in writing that he had deleted all of Facebook's documents, and asked if he should
15 also destroy reports and filings referring to Facebook's confidential information. In response, I
16 instructed him to destroy everything referring to Facebook's confidential information.

17 10. I am not able to comply with ¶3 of Case Management Order No. 19 directing
18 Six4Three to serve a verified declaration of Mr. Dehaye despite good faith efforts to do so, as
19 follows. As set forth above, I terminated my firm's engagement with [Redacted] in January,
20 2019, so he has no current relationship with my firm. On March 1, 2019, after receiving Case
21 Management Order No. 19, I informed [Redacted] by email that the Court had ordered him to
22 provide a verified declaration by March 5, 2019. I sent him a draft declaration on March 3,
23 2019 for his review. Later in the day on March 4, 2019, I received an email from Mr. Ravi
24 Naik, an attorney with a London law firm Irvine, Thanvi, Natas Solicitors, informing me that his
25 firm has been instructed by [Redacted], and asking me to provide Case Management Order no.
26 19 to him. I sent the Order and my February 28, 2019 declaration to Mr. Naik shortly
27 thereafter. On March 4, 2019, Mr. Naik sent another email asking me to provide Facebook's ex
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1 *parte* application and any related documents. I sent him Facebook's application and other
2 papers submitted regarding Facebook's application shortly thereafter. Having no response from
3 Mr. Naik or [Redacted], I emailed Mr. Naik again this morning asking him whether [Redacted]
4 [Redacted] would provide a declaration in compliance with the Order. As of the time I executed
5 this Declaration, I have not received a declaration of [Redacted]. I did, however, receive
6 correspondence sent from Mr. Naik to Facebook's counsel, Ms. Mehta, at 2:42 p.m. EST today,
7 which I have attached as Exhibit F. Mr. Naik's letter to Ms. Mehta confirms that [Redacted]
8 deleted all Facebook confidential and highly confidential documents he was provided including
9 internal case summaries.

10 11. Case Management Order no. 19, ¶2 directs me to produce fully executed
11 Certifications of witnesses. I believe that Ali Partovi, a deposition witness, executed the
12 Protective Order certification during a break at his deposition on October 10, 2017. I have been
13 unable to locate a copy of a certification that he executed, and therefore I have not been able to
14 produce it.

15 12. To the best of my knowledge, the individuals identified above are the only
16 persons to whom my firm provided Facebook's confidential and highly confidential
17 information, and such information was provided in conformance with the Protective Order. At
18 no time did my firm direct, authorize, condone, or otherwise sanction the release, disclosure, or
19 commentary by Mr. Kramer, Mr. Scaramellino, experts and consultants of any confidential or
20 highly confidential information to any third party. Other than the disclosure of Facebook
21 information to the DCMS Committee by Mr. Kramer in November 2018, I am not aware of any
22 such activity.

23 I declare under the penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed March 5, 2019 at Boston, Massachusetts.

26 
27 David S. Godkin
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EXHIBIT A

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information ~~or Highly Confidential Information~~ to anyone, except as allowed by the Order. I will maintain all such Confidential Information ~~or Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information ~~or Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information ~~or Highly Confidential Information~~. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Pthenakis located at the address of 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 1st day of December, 2016, at 9:00AM.

By: [Redacted]

Address: [RedactedRedacted]

[Redacted]

Phone: [Redacted]

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT B

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis of Criterion Law located at the address of 2225 E. Bayshore Road, Palo Alto CA 94303 as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 6 day of January, 2017, at 4:30pm.

By: **Redacted**

Address: **Redacted**

Redacted

Phone: **Redacted**

EXHIBIT C

1 James A. Murphy – 062223

JMurphy@mpbf.com

2 James A. Lassart – 40913

JLassart@mpbf.com

3 Joseph S. Leveroni – 304721

JLeveroni@mpbf.com

4 MURPHY, PEARSON, BRADLEY & FEENEY

88 Kearny Street, 10th Floor

5 San Francisco, CA 94108-5530

Telephone: (415) 788-1900

6 Facsimile: (415) 393-8087

7 Attorneys for Plaintiff's Counsel

David S. Godkin (admitted *pro hac vice*)

8 James E. Kruzer (admitted *pro hac vice*)

Birnbaum & Godkin, LLP

9 280 Summer Street

Boston, MA 02210

10 Telephone: (617) 307-6100

Facsimile: (617) 307-6101

11 godkin@birnbaumgodkin.com

kruzer@birnbaumgodkin.com

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
16 liability company;

17 Plaintiff,

18 v.

19 FACEBOOK, INC., a Delaware
20 corporation;

MARK ZUCKERBERG, an individual;

21 CHRISTOPHER COX, an individual;

JAVIER OLIVAN, an individual;

22 SAMUEL LESSIN, an individual;

MICHAEL VERNAL, an individual;

23 ILYA SUKHAR, an individual; and

DOES 1 through 50, inclusive,

24 Defendants.

Case No. CIV 533328

Assigned For All Purposes To

Hon. V. Raymond Swope, Department 23

DECLARATION OF Redacted

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

25 Trial Date: April 25, 2019

1 I, [Redacted], declare:

2 1. I am over the age of 18. I make the following statements in response to Case
3 Management Order No. 19, ¶3. I make this Declaration from personal knowledge, and if called to
4 testify, I could and would competently testify thereto.

5 2. I received a copy of the Stipulated Protective Order and blank certification in this action
6 on January 6, 2017.

7 3. I executed the certification on January 6, 2017.

8 4. I was able to access Facebook's confidential and highly confidential information after I
9 executed the certification on January 6, 2017.

10 5. I have not revealed Facebook's confidential or highly confidential information to
11 anyone other than Six4Three's counsel (David S. Godkin and James Kruzer) and Thomas
12 Scaramellino, who I understood was working with Mr. Godkin's firm as part of Six4Three's legal
13 team. I have not discussed Facebook's confidential or highly confidential information with anyone
14 other than Six4Three's counsel and Mr. Scaramellino. As used herein, "Facebook's confidential or
15 highly confidential information" includes all information copied or extracted from or reflecting the
16 confidential or highly confidential information, all copies, excerpts, summaries or compilations of
17 confidential or highly confidential information, and any testimony, conversations or presentations by
18 parties or their counsel that might reveal confidential or highly confidential information. I stored and
19 maintained Facebook's confidential and highly confidential information in a secure location.

20 6. I returned to Mr. Godkin's firm and destroyed all Facebook confidential and highly
21 confidential information in my custody or control between January 4, 2019 and January 24, 2019.

22 7. I confirmed to Mr. Godkin my return and destruction of all Facebook confidential and
23 highly confidential information on January 24, 2019. I no longer have access to any Facebook
24 confidential and highly confidential information.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct.

3 Executed March 4, 2019 at Redacted
4

5 Redacted
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EXHIBIT D

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis located at the address of 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 4 day of August, 2016, at 16:11 EST.

By: [Redacted]
Address: [Redacted]
Phone: [Redacted]

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT E

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Stuart G. Gross of Klein & Gross LLP located at the address of The Embarcadero, Pier 9, Suite 100, SF, CA 94111 as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 14th day of May 2018 ~~XXXX~~ at Redacted

Redacted

Redacted

Address:

Redacted

Redacted

Phone:

Redacted

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT F

REDACTED FOR PUBLIC FILING

CERTIFICATE OF SERVICE

I, Jennifer Cuellar, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On March 18, 2019, I served the following document(s) on the parties in the within action:

DECLARATION OF DAVID S. GODKIN IN RESPONSE TO CMO NO. 19 REDACTED FOR PUBLIC FILING

SUPPLEMENTAL DECLARATION OF DAVID S. GODKIN IN RESPONSE TO CMO NO. 19 REDACTED FOR PUBLIC FILING

DECLARATION OF REDACTED, REDACTED FOR PUBLIC FILING

X

VIA MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.

Six4Three, LLC
1267 Chestnut Street, Apt. 6
San Francisco, CA 94109

Six4Three, LLC
2098 8th Avenue, 51
New York, NY 10026

Superior Court of California County of San Mateo
Department 23
400 County Center
Redwood City, CA 94063

X

VIA E-MAIL: I attached the above-described document(s) to an e-mail message, and invoked the send command at approximately _____ AM/PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is jcuellar@mpbf.com

Computer Law Group, LLP
401 Florence Street
Palo Alto, CA 94301
Email: jrusso@computerlaw.com
csargent@computerlaw.com

Attorneys for Theodore Kramer and Thomas Scaramellino

Theodore Kramer
Email: Theodore.kramer@protonmail.com

1 Donald P. Sullivan
2 WILSON ELSE
3 525 Market Street, 17th Floor
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Attorney for Birnbaum & Godkin LLP

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14 Catherine Kim - ckim@durietangri.com
15 Durie Tangri
16 217 Leidesdorff Street
17 San Francisco, CA 94111
18 Email: SERVICE-SIX4THREE@durietangri.com

Attorneys for Facebook, Inc.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 a true and correct statement and that this Certificate was executed on March 18, 2019.

21 By 
22 Jennifer Cuellar

EXHIBIT 2

FILED
SAN MATEO COUNTY

FEB 28 2019

Clerk of the Superior Court

By: 

1 James A. Murphy – 062223
JMurphy@mpbf.com
2 James A. Lassart – 40913
JLassart@mpbf.com
3 Joseph S. Leveroni – 304721
JLeveroni@mpbf.com
4 MURPHY, PEARSON, BRADLEY & FEENEY
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Telephone: (415) 788-1900
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7 Attorneys for Plaintiff's Counsel
David S. Godkin (admitted *pro hac vice*)
8 James E. Kruzer (admitted *pro hac vice*)
Birnbaum & Godkin, LLP
9 280 Summer Street
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10 Telephone: (617) 307-6100
Facsimile: (617) 307-6101
11 godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

12
13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
liability company;

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
19 corporation;
20 MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
21 JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
22 MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,

23 Defendants.
24
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Case No. CIV 533328

Assigned For All Purposes To
Hon. V. Raymond Swope, Department 23

**DECLARATION OF DAVID S. GODKIN IN
SUPPORT OF RESPONSE OF DAVID S.
GODKIN, JAMES E. KRUZER AND
BIRNBAUM & GODKIN, LLP TO
DEFENDANT'S EX PARTE APPLICATION
FOR AN ORDER ENFORCING THE
STIPULATED PROTECTIVE ORDER**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

CIV533328
DIR
Declaration in Reply
1678777



1 I, David S. Godkin, declare:

2 1. I am a partner at the law firm of Birnbaum & Godkin, LLP ("B&G"), counsel of record
3 for Plaintiff Six4Three, LLC ("643") in this case. I make this Declaration from personal knowledge,
4 and if called to testify, I could and would competently testify thereto.

5 2. My firm retained two expert consultants to assist us with the litigation. One was Paul
6 Dehaye, who is a well-known expert in digital privacy issues and qualified to provide expert opinions
7 and analysis of such issues. Mr. Dehaye's assistance was required to rebut Facebook's arguments that
8 its actions that forced 643 out of business were undertaken in the interests of protecting the privacy
9 interests of Facebook's users. Mr. Dehaye executed the Certification required by this Court's
10 Protective Order before he was provided with any of Facebook's confidential or highly confidential
11 documents. By executing the Certification, Mr. Dehaye certified his understanding that Facebook's
12 confidential and highly confidential information was provided to him pursuant to the terms and
13 restrictions of the Protective Order. He certified that he had been given a copy of the Protective Order
14 and that he had read it. He agreed to be bound by the Protective Order and certified that he understood
15 and acknowledged that a failure to comply could expose him to sanctions and punishment in the nature
16 of contempt. He agreed not to reveal Facebook's confidential or highly confidential information to
17 anyone, except as allowed by the Protective Order. He agreed to maintain all such information in a
18 secure manner to prevent unauthorized access to it.

19 3. In early January 2019, I informed Mr. Dehaye that my firm was not able to continue to
20 represent 643 and that 643 was in the process of seeking to engage new counsel. I informed him that
21 because my firm was withdrawing as counsel, my firm was terminating its engagement with him
22 pursuant to our engagement letter with him. I also informed him that he would continue to be bound
23 by the Protective Order. Finally, I directed Mr. Dehaye to return or destroy all Facebook confidential
24 information that he had in his possession, including all documents referring to Facebook's confidential
25 documents, and to confirm that he had done so. In response, on January 11, 2019, Mr. Dehaye
26 confirmed that he had deleted all of Facebook's documents.

27

28

4. My firm also retained a consultant to review Facebook's highly confidential documents to assist us in identifying potential deposition and trial witnesses. This consultant also signed the Protective Order Certification before we provided her with any Facebook documents. As with Mr. Dehaye, I terminated my firm's engagement with the consultant in early January 2019, and the consultant confirmed that all Facebook documents were returned to my firm or destroyed.

5. As set forth above, B&G only provided third parties with Facebook's confidential or highly confidential information in conformance with the Protective Order. At no time did B&G direct, authorize, condone, or otherwise sanction the release, disclosure, or commentary by experts and consultants of any confidential or highly confidential information to any third party, nor is it aware of any such activity.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed February 28, 2019 at Boston, Massachusetts.


David S. Godkin

EXHIBIT 3

FILED
SAN MATEO COUNTY

MAR 01 2019

By  **Clerk of the Superior Court**
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK, INC., et al.

Defendants.

Case No. CIV533328

CASE MANAGEMENT ORDER NO. 19

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

On February 27, 2019, the Court set a briefing schedule on Defendant FACEBOOK, INC.'s ("Facebook") Ex Parte Application for an Order Enforcing the Stipulated Protective Order ("Facebook's Ex Parte" or "Ex Parte").

Having considered Facebook's Ex Parte, filed on February 27, 2018, and the respective responses of: (1) David S. Godkin, James Kruzer, and Birnbaum & Godkin, LLP ("Godkin Response"); (2) Gross & Klein, LLP and Stuart G. Gross ("Gross Response"); and (3) Theodore Kramer and Thomas Scaramellino (Kramer Response") and good cause appears.

IT IS HEREBY ORDERED as follows:

1. Facebook's Ex Parte is GRANTED, IN PART, AND DENIED, IN PART. As a threshold matter, the Court finds the Application is not a request for reconsideration. (See Kramer Response, p. 3:11-21.) The Ex Parte involves new disclosures of confidential or highly confidential information ("confidential information") subject to the Stipulated Protective Order, issued on October 25, 2016, published on the Internet outside of publication by the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS"). (Abrahamson Dec. ISO Ex Parte, Ex.

4, 5. See Ex Parte, p. 1:8-14.)

2 Pursuant to Paragraph 4 of the Stipulated Protective Order,¹ Plaintiff SIX4THREE,
3 LLC ("Six4Three"), through its counsel of record, shall produce fully executed Certifications of all
4 consultants or expert witnesses (Paragraph 4(e)), whether eventually retained or not, and all
5 witnesses (Paragraph 4(g)) **no later than March 5, 2019 at 5:00 p.m.** This shall include the persons
6 identified by Six4Three, including but not limited to, Thomas E. Scaramellino, who has repeatedly
7 stated his role as a law clerk was not as an employee of Birnbaum & Godkin, LLP, Paul Dehaye
8 (Godkin Dec. ISO Godkin Response, ¶ 2 ("Godkin Dec."), and an unidentified retained consultant
9 (*id.* at ¶ 4).

10 3. Mr. Godkin has referred to his communications with Mr. Dehaye and an unidentified
11 retained consultant and their actions pertaining to the Stipulated Protective Order and confidential
12 information. (Godkin Dec., ¶¶ 2 – 4.) Accordingly, Six4Three shall serve, **no later than March 5,**
13 **2019 at 5:00 p.m.,** the verified declarations of Mr. Dehaye and the unidentified retained consultant
14 where they shall state and address: (1) the date of receipt of a copy of the Stipulated Protective Order
15 and blank Certification; (2) the date of execution of the Certification pursuant to Paragraph 4; (3)
16 the date of receipt of confidential information; (4) compliance with the Stipulated Protective Order
17 by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled
18 to receive such information "pursuant to Paragraph 6 (see Godkin Dec., ¶ 5); (5) the date of
19 destruction of confidential information in their custody or control; and (6) the date of confirmation
20 of destruction of confidential information to Mr. Godkin (see *id.* at ¶¶ 3 , 4).

21 4. Mr. Godkin states that his firm "only provided third parties with Facebook's
22 confidential or highly confidential information in conformance with the Protective Order." (Godkin
23 Dec., p. 3:6-7.) The Court finds this statement ambiguous. Mr. Godkin shall serve a declaration
24 clarifying his or any person's, whether employed, consulted, retained, volunteered, affiliated or
25 associated with Birnbaum & Godkin, LLP, compliance with Paragraph 6 by "not reveal[ing] or
26 discuss[ing] confidential information to or with any person who is not entitled to receive such

¹ All further citations to "Paragraph" refer to the paragraphs of the Stipulated Protective Order.

information" **no later than March 5, 2019 at 5:00 p.m.**

5. The Court finds that the recent publication of confidential information made outside of DCMS publication outweighs Mr. Kramer's privacy interests. Further inquiry into what confidential information Mr. Kramer shared with the DCMS compared to what has been published outside of the DCMS is necessary to preserve the sanctity of the Stipulated Protective Order.

Accordingly, Stroz Friedberg, LLC, ("Stroz Friedberg") shall conduct a search on Mr. Kramer's computer, currently in its possession, for any and all logs and records, not limited to systems logs, that will identify any files accessed, opened, uploaded, downloaded, transferred, shared, saved, modified, and/or deleted, for the period from November 19, 2108 at 12:00:00 A.M. (GMT) to November 23, 2018 at 11:59:59 P.M (EST). **Stroz Friedberg shall not open any files on Mr. Kramer's computer absent further of the Court.**

This search is narrowly tailored to the dates from when Mr. Kramer traveled to London and was in communication with DCMS to the date of his stated deletion of confidential information in New York. (See Kramer Dec ISO Six4Three Brief, filed Nov. 26, 2018, ¶¶ 11 – 24.) The Court acknowledges Mr. Kramer's objection to Stroz Friedberg because of their retention by Facebook. However, Kramer has failed to demonstrate that Stroz Friedberg has not complied with the Court's prior orders.

Time is of the essence, given the continuing disclosure of confidential information outside of DCMS publication. Moreover, as previously represented, Six4Three is bereft of funds to retain a joint forensic examiner for the purposes of this inquiry. Thus, any forensic examiner would solely be funded by Facebook.

Stroz Friedberg shall serve on counsel of record a written summary and attach the logs and records promptly upon completion. The Court considers this report confidential information under the protective order and should be treated as such.

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1 6. Facebook's Motion to Open Discovery shall remain on March 15, 2018 at 10:00
2 a.m.

3 7. The Court, *sua sponte*, continues the Case Management Conference from March 7,
4 2019 to March 15, 2019 at 10:00 a.m.

5
6 IT IS SO ORDERED.

7
8 DATED: March 1, 2019

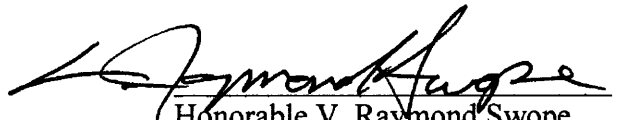
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11 Honorable V. Raymond Swope
12 Judge of the Superior Court
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EXHIBIT 4

1 IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

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4
5 SIX4THREE, LLC,

CERTIFIED TRANSCRIPT

6 PLAINTIFFS,

7 VS.

CASE NO. CIV533328

8 FACEBOOK, INC., ET AL.,

9 DEFENDANTS.

10
11 _____ /
12 REPORTER'S TRANSCRIPT OF PROCEEDINGS (PAGE 7 - 11 SEALED)

13 BEFORE: HONORABLE V. RAYMOND SWOPE, JUDGE

14 DEPARTMENT 23

15 MARCH 13, 2019

16 A P P E A R A N C E S

17 FOR THE PLAINTIFFS:

18 STUART G. GROSS DAVID S. GODKIN
ATTORNEY AT LAW ATTORNEY AT LAW

19 JAMES A. MURPHY JAMES A. LASSART
ATTORNEY AT LAW ATTORNEY AT LAW

20 FOR THE DEFENDANTS:

21 JOSH H. LERNER LAURA E. MILLER CATHERINE Y. KIM
ATTORNEY AT LAW ATTORNEY AT LAW ATTORNEY AT LAW

22 SONAL N. MEHTA NATALIE NAGLE ZACHARY ABRAHMSON
23 ATTORNEY AT LAW ATTORNEY AT LAW ATTORNEY AT LAW

24 FOR THE PRINCIPAL PARTY:

25 JACK RUSSO
ATTORNEY AT LAW

26 REPORTED BY: GERALDINE VANDEVELD, C.S.R. 8634

1 THE COURT: ALL RIGHT. SO ARE YOU SEEKING DISCOVERY
2 AS TO WHAT THE ATTORNEYS DID DURING THE COURSE OF THE LAST
3 SEVERAL MONTHS IN RELATION TO THE DISCLOSURE OF CONFIDENTIAL
4 INFORMATION PURSUANT TO THE STIPULATED PROTECTIVE ORDER?

5 MR. LERNER: YES, YOUR HONOR. AS YOU IDENTIFIED AND
6 EXPLAINED, WE NEED TO SATISFY THE BURDENS FOR DOING THAT. AND
7 THERE IS A HIGH BURDEN FOR DOING THAT, WHICH WE BELIEVE IS
8 SATISFIED HERE. AND IN THOSE CASES, THE CASES DO NOT SAY THAT
9 MERELY BECAUSE IN SOME INSTANCES DISCOVERY CAN BE REQUIRED
10 FROM COUNSEL, THAT CREATES A WAIVABLE CONFLICT THAT MUST MEAN
11 COUNSEL CAN'T PARTICIPATE IN THE CASE.

12 THE CASES DON'T SAY THAT. THEY SAY YOU MUST MEET
13 THE STANDARD FOR THE DISCOVERY. THEY DON'T SAY ONCE YOU MET
14 THAT STANDARD, COUNSEL IS OUT. NONE OF THE CASES SAY THAT AND
15 THEY HAVEN'T ARGUED AS MUCH.

16 THE COURT: OKAY.

17 MR. LERNER: IF I MAY VERY QUICKLY BEFORE THE
18 HEARING ON FRIDAY, THERE ARE A COUPLE OF OUTSTANDING ISSUES
19 WITH RESPECT TO YOUR HONOR'S ORDER. YOUR HONOR ASKED FOR BUT
20 DID NOT RECEIVE DECLARATIONS FROM THE QUOTE UNQUOTE "EXPERTS."
21 MR. DEHAYE IN PARTICULAR HAS NOT PROVIDED THAT DECLARATION.
22 GIVEN THAT THE SAME DOCUMENTS THAT YOUR HONOR ORDERED SEALED
23 KEEP ON POPPING UP, WE DON'T UNDERSTAND WHY PEOPLE WHO SIGNED
24 THE PROTECTIVE ORDER IN THIS CASE ARE BOUND BY IT AND WERE
25 WORKING FOR COUNSEL CAN'T PROVIDE THAT DECLARATION. AND IT'S
26 OBVIOUSLY TROUBLING TO US BECAUSE THESE DOCUMENTS AREN'T

1 SHOWING UP ON THE INTERNET BY MISTAKE.

2 WE NEED TO FIGURE OUT WHERE THEY ARE COMING FROM.
3 SO FOR MR. DEHAYE AND FRISSORA, WE DO BELIEVE THAT COUNSEL
4 SHOULD PROVIDE THE DECLARATIONS OR THE COURT SHOULD ORDER
5 THOSE EXPERTS WHO SIGNED THE DECLARATIONS AND SHOULD BE
6 SUBJECT TO YOUR HONOR'S JURISDICTION TO PROVIDE THEM.

7 THE LAST THING, WHICH I BELIEVE YOU IDENTIFIED AND
8 ALREADY PICKED OUT IS WHEN COUNSEL WANTED TO PROTECT
9 PRIVILEGE, EVERYTHING THAT MR. SCARAMELLINO DID WAS AS A
10 MEMBER OF THE LEGAL TEAM AND INDEED AS YOUR HONOR POINTED OUT
11 ON MAY 15TH, HE WROTE AND REPRESENTED TO THE THIRD PARTY,
12 "THANKS, FRANK. I AM AN ATTORNEY AND MEMBER OF THE LEGAL TEAM
13 HERE."

14 AND THEY SAID THEY WERE SUPERVISING EVERY STEP HE
15 TOOK. ALL OF HIS WORK WAS SUPERVISED BY THEM. THAT'S -- THAT
16 WAS THE ARGUMENT WHEN WE TRIED TO GET THE COMMUNICATIONS WITH
17 MR. SCARAMELLINO. NOW IN ANSWER TO YOUR HONOR'S QUESTION
18 ABOUT WHAT THE LEGAL TEAM DID, MEMBERS OF YOUR TEAM UNDER YOUR
19 INSTRUCTION OR ANYTHING ELSE. THE ANSWER TO YOUR QUESTION IS
20 MY FIRM, MY LAW FIRM I.E. NOT MR. SCARAMELLINO DID THE
21 FOLLOWING THINGS. AND WE DIDN'T CONDONE OR ASK
22 MR. SCARAMELLINO TO DO X, Y OR Z.

23 MR. SCARAMELLINO SHOULD SIGN A DECLARATION JUST LIKE
24 MR. GODKIN CLARIFYING WHO, IF ANYONE, HE SHARED THIS
25 INFORMATION WITH. SO THAT WE CAN START TO GET TO THE BOTTOM
26 AGAIN OF WHERE THIS INFORMATION IS COMING FROM AND WHY IT

1 STATE OF CALIFORNIA)

2) SS.

3 COUNTY OF SAN MATEO)

4 I, GERALDINE VANDEVELD, OFFICIAL COURT REPORTER,
5 COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

6 THAT THE FOREGOING CONTAINS A TRUE, FULL AND CORRECT
7 TRANSCRIPT OF THE PROCEEDINGS GIVEN AND HAD IN THE
8 WITHIN-ENTITLED MATTER THAT WERE REPORTED BY ME AT THE TIME
9 AND PLACE MENTIONED AND THEREAFTER TRANSCRIBED BY ME OR AT MY
10 DIRECTION INTO LONGHAND TYPEWRITING AND THAT THE SAME IS A
11 CORRECT TRANSCRIPT OF THE PROCEEDINGS.

12 DATED: MARCH 14, 2019

13 

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15 GERALDINE VANDEVELD, C.S.R. #8634
16 OFFICIAL COURT REPORTER
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EXHIBIT 5

1 Jack Russo (Cal. Bar No. 96068)
2 Christopher Sargent (Cal. Bar No. 246285)
3 COMPUTERLAW GROUP LLP
4 401 Florence Street
5 Palo Alto, CA 94301
6 (650) 327-9800 office
7 (650) 618-1863 fax
8 jrusso@computerlaw.com
9 csargent@computerlaw.com

10 Attorneys for Third Parties
11 THEODORE KRAMER and
12 THOMAS SCARAMELLINO

13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SAN MATEO

15 **Six4Three, LLC**, a Delaware limited liability
16 company,

17 Plaintiff;

18 v.

19 **Facebook, Inc.**, a Delaware corporation;
20 **Mark Zuckerberg**, an individual;
21 **Christopher Cox**, an individual; **Javier**
22 **Olivan**, an individual; **Samuel Lessin**, an
23 individual; **Michael Vernal**, an individual;
24 **Ilya Sukhar**, an individual; and **Does 1–50**,
25 inclusive,

26 Defendants.

Case No. CIV533328

Assigned for all purposes to Hon. V.
Raymond Swope, Dep't 23

**DECLARATION OF THOMAS SCARAMELLINO
IN COMPLIANCE WITH AMENDED CASE
MANAGEMENT ORDER NO. 19**

1 I, Thomas Scaramellino, declare as follows:

2 1. My name is Thomas Scaramellino, I am over the age of 18. I make the following
3 statements in compliance with the Court's March 13, 2019 Order that I submit a Declaration
4 pursuant to Amended Case Management Order no. 19.

5 2. Until my relationship with Birnbaum & Godkin, LLP ended in early December
6 2018, I assisted in the present litigation as a law clerk of the legal team for Plaintiff Six4Three,
7 LLC, supervised by David Godkin. Because I was not employed full-time by Birnbaum &
8 Godkin, I was required by Mr. Godkin to execute the Protective Order certification before I was
9 given access to Facebook's confidential information. A true and correct copy of this executed
10 certification is attached as **Exhibit 1**. At the time I executed this certification, it was understood
11 that I would only be provided access to Facebook's confidential information; I therefore struck
12 out the words "Highly Confidential Information" on the certification. As the litigation progressed
13 and my assistance was requested in drafting pleadings which involved Facebook's highly
14 confidential information, and after obtaining the Court's permission regarding my involvement
15 as a law clerk in response to a motion filed by Facebook attempting to sever me from the legal
16 team, I was permitted access to Facebook's highly confidential information as well. At all times I
17 understood that strict compliance with the Protective Order was required.

18 3. At no time from my execution of the attached certification on December 1, 2016
19 have I provided information subject to the Protective Order to any unauthorized individuals or
20 outside the scope of Mr. Godkin's supervision or without Mr. Godkin's knowledge.

21 4. Pursuant to the Court's December 14, 2018 Order, on December 19, 2018, in the
22 presence of counsel for Facebook and Facebook's forensics firm, I took all steps necessary to
23 delete, destroy, or return to Facebook all confidential and highly confidential information
24 produced by Facebook under the Protective Order, and I executed a Certification of Destruction
25 to the Court. A true and correct copy of this certification is attached as **Exhibit 2**.

26 5. In the Summer of 2017, Mr. Godkin directed the legal team to analyze the
27 privilege logs served by Facebook on Birnbaum & Godkin, which were served in an
28 unsearchable PDF format and contained more than 14,000 entries. In order to analyze the

1 privilege logs, it became necessary to convert the file to a readable and searchable Microsoft
2 Excel format, because Facebook refused to provide the file in native Excel format. Once
3 converted, it further became necessary to write software code that would enable us to automate
4 the process of reviewing such a large file with over 14,000 entries. To accomplish this task, Mr.
5 Godkin authorized me to obtain the aid of Mr. Brent Frissora, who has significant experience in
6 analyzing large data sets, coding macros and programs that can analyze data in Microsoft Excel,
7 and various related tasks. Despite the limited scope of Mr. Frissora's involvement in the present
8 litigation, he was required to execute a Protective Order certification before he began his work as
9 an extra precaution, which he did on August 4, 2017. A true and correct copy of Mr. Frissora's
10 executed certification is attached as **Exhibit 3**. Mr. Frissora never received any of the content or
11 the documents identified in those logs.

12 6. Mr. Frissora's expertise proved valuable to advancing 643's interests in the case
13 as his program was able to identify a wide range of deficiencies in Facebook's privilege log,
14 including that more than half of the 14,000 entries did not include any communication to or from
15 any attorney. Mr. Frissora's program was further able to detect that Facebook made material
16 undisclosed changes across three iterations of its privilege logs, deleting documents from the
17 logs that had not been produced in this litigation. These serious deficiencies (and numerous
18 others) regarding Facebook's privilege logs were brought to the Court's attention in letters during
19 the Fall of 2017. To date, the Court has not ruled on this request by Six4Three.

20 7. As confirmed by Mr. Frissora, he has deleted and destroyed Facebook's privilege
21 logs and his work product related to this litigation.

22 8. I have had no communication with the other experts mentioned in David Godkin's
23 Declaration of March 5, 2019 since at least early December 2018 and do not have personal
24 knowledge of and therefore cannot testify as to their subsequent destruction or return of this
25 information.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this declaration was entered into on March 14, 2019 in
3 Rumson, New Jersey.

4 
5 _____
6 Thomas Scaramellino
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EXHIBIT 1

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or ~~Highly Confidential Information~~ to anyone, except as allowed by the Order. I will maintain all such Confidential Information or ~~Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or ~~Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or ~~Highly Confidential Information~~. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis located at the address of 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 1st day of December, 2016, at 9:00AM.

By: 

Address: 51 Melcher Street, 7th Floor
Boston, MA 02210

Phone: (617) 532 - 0992

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT 2

1 Jack Russo (Cal. Bar No. 96068)
2 Christopher Sargent (Cal. Bar No. 246285)
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csargent@computerlaw.com

6 Attorneys for Third Parties
7 THEODORE KRAMER and
8 THOMAS SCARAMELLINO

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN MATEO

11 **Six4Three**, a Delaware limited liability
12 company,

13 Plaintiff;

14 v.

15 **Facebook, Inc.**, a Delaware corporation;
16 **Mark Zuckerberg**, an individual;
17 **Christopher Cox**, an individual; **Javier**
18 **Olivan**, an individual; **Samuel Lessin**, an individual;
19 **Michael Vernal**, an individual;
20 **Ilya Sukhar**, an individual; and **Does 1–50**,
21 inclusive,

22 Defendants.

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 12/21/2018
By /s/ Gerardo B. Tolentino
Deputy Clerk

Case No. CIV533328

Assigned for all purposes to Hon. V.
Raymond Swope, Dep't 23

**THOMAS SCARAMELLINO'S CERTIFICATION
OF DESTRUCTION**

1 I, Thomas Scaramellino, declare under penalty of perjury as follows.

2 1. My name is Thomas Scaramellino. I am over the age of 18. I have personal
3 knowledge of the matters stated in this declaration, except where stated on information and
4 belief, and I believe those matters to be true.

5 2. I read and reviewed the Court's December 14, 2018 Order.

6 3. Pursuant to that December 14, 2018 Order, and as I understand its modification on
7 the record on December 17, 2018, I hereby make the following certification.

8 4. On December 19, 2018 starting at approximately 9:00 a.m. and continuing until
9 completion, at the offices of Murphy Pearson Bradley & Feeney at 88 Kearny St., 10th Floor,
10 San Francisco, CA 94108, and in the presence of David Godkin and his personal counsel, Stuart
11 Gross and his personal counsel, my personal counsel, a representative from Stroz Friedberg, and
12 counsel for Facebook, for each account or device described in Appendix A attached hereto where
13 I am listed as the custodian:

14 (a) I took all steps necessary to delete, destroy, or return to Defendant all
15 Documents¹ produced by Defendant and designated Confidential or
16 Highly Confidential under the Stipulated Protective Order entered in this
17 matter on October 25, 2016 in my possession, custody or control;
18
19

20 ¹ By "Document" and "Documents," I mean any written, printed, typed, recorded, magnetic,
21 digitized, punched, copied, graphic or other tangible thing in, through, or from which
22 information may be embodied, translated, conveyed, or stored including letters, correspondence,
23 memoranda, notes, records, minutes, studies, reports, ledgers, books, notebooks, pamphlets,
24 announcements, publications, advertisements, sales literature, brochures, manuals, price lists,
25 messages, papers, legal instruments, agreements, telegrams, telexes, electronic mail, electronic
26 attachments, dictation tapes, audio tapes, video tapes, film, computer files, computer tapes
27 (including backup tapes), computer discs (including backup discs), computer printouts,
28 microfilm, microfiche, worksheets, diaries, calendars, photographs, prints, pictures, charts,
drawings, sketches, graphs, and all of the writings or drafts thereof as defined in California
Evidence Code section 250, as well as data stored in a computer, computer networks, hard-
drives, USB drives, CDs, DVDs, data stored on removable magnetic or optical media (e.g.,
magnetic tape, floppy discs and recordable optical disks), data used for electronic data
interchange, audit trails, digitized pictures and video (e.g., data stored in MPEG, JPEG and GIF
formats), and digitized audio and voicemail. A draft or non-identical copy is a separate
document within the meaning of this term.

- 1 (b) I took all steps necessary to delete, destroy, or return to Defendant all
2 Documents (a) containing any information copied or extracted from or
3 reflecting the Confidential Information or Highly Confidential
4 Information; (b) comprising copies, excerpts, summaries, or compilations
5 of Confidential Information or Highly Confidential Information; and (c)
6 containing any testimony, conversations, or presentations by parties or
7 their counsel that might reveal Confidential Information or Highly
8 Confidential Information; and,
9 (c) All Documents encompassed within (a) or (b), *supra*, have been deleted,
10 destroyed, or returned to Defendant.

11 5. I further certify that, other than the devices and accounts listed in Appendix A, I
12 do not have any other accounts or devices that contain any documents that contain any Facebook
13 Confidential or Highly Confidential Information in my possession custody or control.
14

15
16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct and that this declaration was entered into on December 19, 2018 in
18 San Francisco, California.

19
20 
21 _____
22 Thomas Scaramellino
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APPENDIX A

Custodian	Evidence Type	Description	Username	
Theodore Kramer	Cloud Storage Account	Dropbox	theodore.kramer@gmail.com	
Thomas Scaramellino	Cloud Storage Account	Dropbox	t[REDACTED]@tallygo.com	
Thomas Scaramellino	Cloud Storage Account	Dropbox	t[REDACTED]@six4three.com	Transferred deleted account's files to new account.
Thomas Scaramellino	Cloud Storage Account	Dropbox	thomas.scaramellino@gmail.com	
Theodore Kramer	Cloud Storage Account	Google	theodore.kramer@gmail.com	Preservation as noted in e-mail dated 12/13/2018
Theodore Kramer	Cloud Storage Account	Google	[REDACTED]@six4three.com	
Thomas Scaramellino	Cloud Storage Account	Google	t[REDACTED]@tallygo.com	Preservation as noted in e-mail dated 12/08/2018
Thomas Scaramellino	Cloud Storage Account	Google	thomas.scaramellino@gmail.com	Preservation as noted in e-mail dated 12/13/2018
Theodore Kramer	Cloud Storage Account	iCloud	theodore.kramer@gmail.com	

Theodore Kramer	Cloud Storage Account	Proton Mail	<u>t[REDACTED]@protonmail. com</u>	Preservation as noted in e-mail dated 12/13/2018
Thomas Scaramellino	Cloud Storage Account	Proton Mail	<u>t[REDACTED]@proton mail.com</u>	Preservation as noted in e-mail dated 12/08/2018
Gross & Klein	Cloud Storage Folder	Box		
Theodore Kramer	Device	(4) USB Devices		
Thomas Scaramellino	Device	External Hard Drive		
Thomas Scaramellino	Device	iPhone (Personal)		
Theodore Kramer	Device	iPhone 8 (Personal)		
Theodore Kramer	Device	iPhone SE (International burner)		
Thomas Scaramellino	Device	Mac Mini		
Theodore Kramer	Device	MacBook		
Thomas Scaramellino	Device	MacBook		

EXHIBIT 3

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis located at the address of 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 4 day of August, 2016, at 16:11 EST.

By: Pratt Ford
Address: 100 W 58TH ST, 2B
NEW YORK, NY 10019
Phone: 646-460-2658

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STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328